

EXECUTIVE SUMMARY

The call for uniformity in government purchasing practices has been sounding in the State of California for more than three decades. Reactions, responses, and recommendations have varied in focus and pace, from reports by the Legislature to Executive Orders, from policy quick fixes using Management Memorandum to the protracted process of reorganizing and consolidating the State's entire purchasing code.

Although some progress has been realized, many of the underlying, core issues remain unresolved, hindering any lasting and meaningful improvements. This report presents findings, recommendations, and implementation plans for initiatives aimed at resolving core issues regarding uniform purchasing policies and procedures.

In 2001, the Department of General Services (DGS) initiated a project to perform a diagnostic review of purchasing operations. Having evolved over a period of years, the statutes, regulations, policies and procedures available to State agencies for the acquisition of information technology goods and services (including telecommunications), and non-information technology goods and services were in need of re-examination.

DGS recognized that contradictions, inconsistencies, ambiguities, and lack of clarity must be addressed to improve the ability of the State's buying agencies in accomplishing their purchasing responsibilities, as well as to assist the State's control agencies in fulfilling their oversight responsibilities.

The inconsistencies related to the existing state purchasing system result in increased costs by causing:

- Increased protests
- Canceled and re-issued solicitations
- Delayed projects
- Inefficient workflow

DGS' efforts to address these issues were raised to greater prominence by the recommendations of the Governor's Task Force on Contracting and Procurement Review, as a result of Executive Order D-55-02.



Task Force Recommendation #7 provided the impetus for this report, and states, in part:

“...DGS should undertake an initiative to align the laws governing contracting and procurement of goods, services, and IT, including the award protest processes. Additionally, DGS should consider whether the separation of the procurement policy and oversight from the operational procurement function should be pursued. In the case of IT procurements, DGS shall work collaboratively with the Department of Finance (DOF) to develop acquisition procedures that are consistent with the development of overall IT acquisition policies [policies] being developed by DOF.”

In order to identify where DGS is and is not operating from a foundation of clear policies and procedures and to improve the acquisition of goods and services in the State, DGS initiated a formal project to:

- Perform a review and analysis of the current and evolving purchasing environment, including statutes, policies, and procedures
- Analyze and assess the organizational structures, functions, and responsibilities involved in the purchasing processes
- Analyze and assess the organizational roles of the DGS Procurement Division (PD) and Office of Legal Services (OLS)
- Identify problems, ambiguities, inconsistencies, errors, and omissions of the purchasing environment
- Develop recommendations and an actionable implementation plan to improve and clarify DGS’ purchasing policies, processes, roles, and responsibilities.

DGS awarded a contract to Eskel Porter Consulting, Inc., as the result of a competitive procurement. The project charter authorized the CORE Team to undertake an independent and objective analysis effort to address the core, underlying issues related to uniform purchasing of goods, services, telecommunications, and information technology goods and services.

In March of 2003, Eskel Porter Consulting began work on the CORE Project. The project name characterizes the intention to address the core, underlying issues related to uniform purchasing.

As described by Ralph Chandler, Deputy Director, the project is “focused on what is tactically possible and practical in the current environment as well as developing a longer-term overall strategy.”

Uniformity begins with nomenclature. Generally in the State, the term “procurement” has become linked to the purchase of goods and IT/telecommunications goods and services, while “contracting” has become the designation for the purchase of non-IT services. Within this report, we use “purchasing” as the term incorporating the acquisition of goods, services, and IT/telecommunications goods and services. “Procurement” used in this report refers to the process of soliciting and selecting a source, whereas “contracting” refers to the steps following source selection including entering into a binding contract or purchase order.

Approach

The CORE Team employed a formal knowledge acquisition methodology, selecting and applying specific techniques, including:

- Research—independent research, industry group best practices, and surveys
- Interviews and focus groups—internal DGS staff, Department of Finance, and client entities with purchasing authority delegated by DGS
- Observation and participation—viewing or performing processes first-hand

This approach was designed to establish and maintain the analysis team’s independence and objective, third-party perspective. The team minimized the utilization of material from other similar reports during the first part of the project to preclude undue influence and ensure objectivity. When conducting interviews or focus sessions, the team practiced active listening and avoided asking any leading questions.

The CORE Team analyzed the State’s purchasing activities as an inter-related and inter-dependent system of statutes, regulations, policies, procedures, organizational authorities, roles, responsibilities, structures and interfaces. The team researched and analyzed numerous source documents including:

- State of California Annotated Statutes
- State Administrative Manual
- State Contracting Manual
- Statewide Information Management Manual
- Management Memos, Executive Orders, and other ad hoc sources of policy

Throughout the project, the consultants worked closely with the DGS project team and other State participants, whose cooperation and participation are valued and greatly appreciated.

The CORE Team identified best practices by conducting research and analysis utilizing the following primary sources:

- National Association of State Procurement Officials
- American Bar Association
- Federal Acquisition Regulations
- National Contract Management Association
- Westlaw research services for access to the annotated purchasing codes and regulations for all 50 states

Throughout the project, the consultants worked closely with the DGS project team and other State participants, whose cooperation and participation are valued and greatly appreciated. The DGS team participants attended the CORE Team's bi-weekly review meeting. They reviewed and commented on the draft findings as the team produced them. Their review was critical in identifying gaps or factual errors in these early draft work products.

Additionally, the CORE Team conducted interviews and focus groups with key subject matter experts within DGS. These included sessions with a group of buyers, several key managers, and several of the Department's most knowledgeable and experienced staff.

The team elicited participation from outside of DGS. The team conducted eight client entity group sessions with a variety of agencies (two "large," two "medium," and two "small") in order to gain insights and perspectives from a diverse group of DGS' clients. The team also interviewed the representatives from the Department of Finance (DOF) Technology Investment Review Unit (TIRU) in its role as a partner control agency for IT purchasing.

Lastly, the team conducted meetings with the American Bar Association (ABA) and the DGS Supplier Advisory Workgroup to discuss issues with California's purchasing system from their perspectives. This analysis approach allowed the team to develop creative ideas to address the problems and frustrations brought to light through the combination of strong detailed documentary research strengthened through extensive stakeholder participation.

Findings and Recommendations

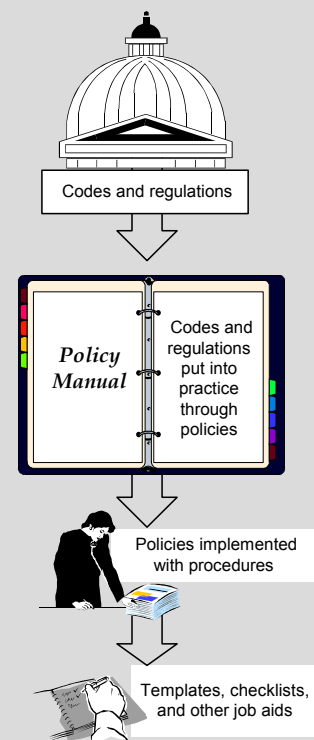
Over a four-month period, the CORE Team identified more than 30 individual topics, or “findings,” related to uniform purchasing. Out of these findings, the following five over-arching themes emerged:

- The urgent need for centralized, uniform purchasing policies must be effectively addressed as a first priority.
- Foundational purchasing procedures will be required to successfully put uniform policies into practice.
- Several organizational issues within DGS must be addressed, including establishing the policy and procedures office, and delineating roles and responsibilities between the DGS PD and OLS.
- To maximize the gains of policy uniformity and procedure establishment, some legislative changes are necessary.
- Significant improvements can be realized through addressing specific, individual purchasing issues that are not dependent on other major initiatives.

Centralize Purchasing Policy Development

Purchasing policies are written to support compliance with laws. California law consists of the 34 Articles of the State Constitution and 29 Codes containing statutes throughout multiple sources, including the California Public Contract Code (PCC), Revenue and Taxation Code (RTC), Welfare and Institutions Code (WIC), Business and Professions Code (BPC), Military and Veterans Code (MVC), and Government Code (GC). Furthermore, legally adopted regulations filed with the Secretary of State have the force of law and are contained in the California Code of Regulations (CCR), some of which apply to purchasing.

One may argue that the laws themselves should be centralized and made uniform through an effort to rewrite the entire body of purchasing code. The CORE Team believes the specific inconsistencies in laws identified, as part of this effort, should be addressed individually. That said, we do not recommend against undertaking a major purchasing code reform project as an entirely separate and distinct effort, which would result in implementing something akin to the ABA’s Model



“The flood of Management Memos, CMAS memos, CalCard memos, Customer Forums, Frequently Asked Questions, etc. etc., can be very confusing and the answers provided are sometimes inconsistent or contradictory. DGS OLS and PD also need to make sure they are speaking with one voice on issues that affect both procurement and contracting.”
Response to Procurement and Contracting Officer (PCO) Survey

Procurement Code. However, with legislative changes detailed in this report and continued attention to evolving needs in the future, the State need not entertain sweeping purchasing code revisions to realize substantial gains in the efficiency and effectiveness of its purchasing system.

Effective policies are at the core of putting laws into practice. Purchasing policies must be developed, implemented, and maintained to dictate clear-cut rules and set standards for performance measures, as well as lay the groundwork for the appropriate use of public funds.

Sufficient attention to policy is critical to the success of any purchasing program and must be considered a high priority task. Policies must be kept current with changes in statutes, court decisions, executive orders, and other decisions regarding how laws will be followed.

The State Administrative Manual (SAM) is California’s official policy manual. As such, departments are required to abide by the policies that are articulated in SAM when conducting State business. Over time, DGS has discontinued regular updating of SAM in favor of creating the State Contracting Manual (SCM) and the California Acquisition Manual (CAM). In addition, the Department of Information Technology (DOIT) created the Statewide Information Management Manual (SIMM) as the policy/procedure manual specifically intended for information technology (IT) purchasing. All of these publications contain purchasing policy, some of which is unique, some overlapping, and some contradictory.

In recent times, the rate of change to purchasing policies has outpaced updates to SAM, CAM and/or SCM, resulting in misunderstandings and mistakes both within DGS and throughout State organizations. There is no single authority to change policy, no alignment between the manuals, and no timetable for revisions. Of necessity, buyers are forced to find, read, consider, understand and comply with a multitude of memo types.

Confusion and frustration are heightened by the current system, where policy is revised and initiated through bulletins that includes Management Memorandum (Memos), Executive Orders, Administrative Orders, Technology Directives, Budget Letters, and other documents. Moreover, Management Memos themselves have become sources of policy, rather than announcements of change to a manual.

The CORE Team recommends that DGS declare SAM as the single statewide purchasing policy manual. SAM is the policy source specifically called out in statute (Government Code §14615.1), and DGS may update SAM sections relating to purchasing policy without the formal constraints associated with the Administrative Procedures Act. Furthermore, Management Memos should only announce and explain policy changes and reference the section in SAM that has been revised.

To support SAM, DGS must establish a policy and procedures office staffed with appropriately skilled and dedicated resources to enable its success. The office would be responsible for the entire lifecycle of purchasing policies from inception until rescindment. This office would develop and manage the governance process for policy development determining the stakeholder involvement model in the process.

The overwhelming majority of improvements to the purchasing system can be realized through enhanced policies and procedures. DGS has broad authority to establish policies that govern the purchasing activities of the State. The key to success for DGS is to develop and implement a uniform set of policies and related procedures through a rigorous review and vetting process (i.e., governance).

With the large variety of procurement methods available to departments, it is critical that some level of uniformity in procedures be developed, implemented, and maintained, and that there is some assurance that uniform procedures are being followed.

Develop Uniform Purchasing Procedures

Although it is unreasonable to dictate the performance of each and every purchasing task to all State organizations, DGS must set the foundational procedures for implementing uniform policies—at a minimum, those foundational procedures that encompass a large percentage of the common, repeatable tasks found in every purchase, regardless of type (i.e., goods, services, IT).

Today there is no entity assigned responsibility for the development, implementation, and maintenance of standardized purchasing procedures. Currently, individual buyers use a variety of processes, procedures, methods, and tools to conduct their work. Customized and often arbitrary approaches to purchasing rely upon the buyer to individually interpret purchasing policy, create applicable solicitation documents, evaluate the responses, and award the contract.

State organizations with purchasing delegations from DGS are required to submit their own purchasing procedures to DGS

for review and approval. DGS does not offer the agencies a model or template for their use in developing procedures. The agencies are left to interpret and implement the policies directly from the source documents. The fact that DGS is the purchasing control agency and centralized purchasing office means that the other purchasing officials throughout the State look to DGS for guidance.

Currently, the delegated and distributed purchasing officials have no central source for such guidance. They rely on their experience, phone calls to DGS, and trial and error. DGS has the expertise to provide detailed purchasing procedure guidelines that will form the basis for all purchasing activities in the State, both inside and outside DGS.

State departments interviewed for this report noted that the lack of uniform procedures within DGS increases the difficulty for them when required to develop their own procedures. These groups indicated that it would be easier and more efficient to customize their own procedures based upon a set of DGS-standardized procedures.

The CORE Team recommends that DGS declare the State Contracting Manual (SCM) as the single, centralized procedure manual for purchasing. It is anticipated that the new version of the SCM will be entirely re-written to contain uniform procedures in support of the policies documented in SAM. Both DGS and other agencies will follow the procedures as developed, thereby introducing a level of consistency not achieved to date.

DGS must dedicate resources to develop common processes and procedures for use by buyers, both within DGS and in organizations with delegated purchasing authority. DGS must develop internal processes to ensure updates occur as necessary, and that updates are disseminated in a timely manner.

Policy and procedure development must be conducted according to a defined process with a clear governance structure. The policy office will employ the governance process and structure in the development and maintenance of policies and procedures. The governance process must involve internal and external stakeholder participation in the vetting process. Such responsibilities should be assigned to the policy and procedures office, as described in the following report section.

Address Organizational Inefficiencies

To accomplish its goals for uniform policies and procedures, DGS must create an adequately staffed, dedicated policy and procedures office. Currently, PD has a unit responsible for policy. This unit has struggled with creating and implementing purchasing policy for numerous reasons, including lack of sufficient resources. Contributing to this problem is the organizational placement of the unit as “low” within DGS PD and, subsequently, it does not carry the authority necessary for a policy unit to succeed.

The CORE Team recommends the creation of a new Policy and Procedures Office (PPO), reporting directly to the DGS Director or alternately the PD executive-level (Deputy Director or Assistant Deputy Director). A high-level placement within the DGS organization reflects executive-level commitment to this vital role.

The purchasing control agency function of oversight is currently split between PD and OLS. PD performs this function for goods and IT procurements while OLS performs this role for services contracts. The CORE Team recommends consolidating the approval of contracts for all types of purchases (goods, services, IT goods/services, and telecommunications) within the Procurement Division.

Currently OLS performs a general business review and approval of services contracts. In lieu of conducting this review and approval, OLS should apply its attorney resources in its role as legal counsel to PD and the other DGS divisions. OLS should examine all types of procurements and contracts for legality. Detailed roles and responsibilities for PD and OLS should be delineated to support a collaborative work environment where purchasing officials make business decisions and attorneys make legal determinations as needed.

We recommend DGS increase the role of OLS in determining legal issues for all contract types based on the risk to the State or other criteria, such as deviation from standard contract language or unusual contract types (e.g., revenue sharing agreements). Legal involvement may start with the inception of the transaction and follow through until its completion.

OLS’ involvement should be systematized to provide mandatory review under certain conditions, such as high risk, dollar amount, or variances from standards (e.g., standard terms and conditions). For those transactions where legal involvement is optional, there must be available legal support

Procurement officials should approve all purchases, leaving OLS free to provide legal counsel on a larger number of risky procurements.

Legislative change recommendations range from the simple correction of wordings in code, such as removal of references to the Department of Information Technology, to the clarification of complex concepts such as conflict of interest and follow-on work.

whenever the purchasing officer deems it prudent. By leaving the general business decisions on non-IT services to the purchasing officials in PD, OLS can better serve the State by considering legal issues on a much wider class of purchasing activities and documents.

Initiate Legislative Changes

There are numerous ways that legislative changes can be approached—sweeping legislative change is one perspective, while others support the notion that specific areas or incremental legislative change may be a better approach.

Several years ago, DGS was disappointed with the defeat of the California Acquisition Reform Act (CARA), aimed at updating and replacing the body of procurement and contracting code. Since then, some personnel have adopted an attitude that certain improvements in purchasing are hindered by laws in need of revision. In some cases this opinion has merit. However, in most cases the development and adherence to uniform policy will remedy the core problems encountered by DGS and its delegated authorities.

The CORE Team recommends several specific legislative changes. As is the case with policies, laws have been created over many, many years, resulting in some inconsistencies and lack of clarity. Some of the key legislative change recommendations include:

- Modify the PCC to allow for incentive contracting in the areas of goods, IT and non-IT services.
- Propose legislation to remove the specific dollar amounts from the statute authorizing DGS to exempt services contracts from review and authorize DGS to set the dollar amount levels directly.
- Propose legislation to centralize the purchasing authority with DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to establish a delegation for services.
- Propose legislation to further define and clarify “follow-on work.” as it relates to “organizational conflict of interest.”

Address Individual Purchasing Issues

Throughout the discovery and analysis phases of the project, the CORE Team identified issues that may be acted upon to provide specific benefits. These changes should be undertaken in coordination with the foundational improvements referenced in our other recommendations. The following are summaries of key recommendations within this category:

- Capture “lessons learned” information to share with buyers and legal staff from DGS and individual departments and feed lessons learned into the development of policy and procedure to ensure timely implementation and dissemination.
- Develop standardized models for each type of procurement (e.g., IFB, RFP, RFQ, CMAS, MSA, NCB) that clearly identify the required and optional steps applicable to goods, IT, and non-IT services purchases.
- Develop uniform policies that require the use of performance specifications and minimize the use of design specifications in solicitations where the business needs, in whole or in part, are able to be stated in terms of function.
- Design a simpler system of thresholds and criteria to determine which transactions require review and approval. Currently, approval levels are overly complex with too many different monetary criteria for various types of procurements. DGS should develop a simplified procedure and forms/tools for goods, IT, and services purchases below a “small purchase” threshold, such as \$5,000, within the buying agency’s delegated or organic authority.
- Collect and analyze metrics to identify specific opportunities for combining orders on commonly purchased items, to develop multiple award contracts and master agreements that contain minimum order commitments and tiered volume pricing levels according to the metrics.
- Develop a new system of delegation that simplifies the levels and types of delegations, combining goods, IT, and non-IT services delegations under a single set of rules. Include a universal delegation that applies to all agencies for all purchasing under a fixed dollar

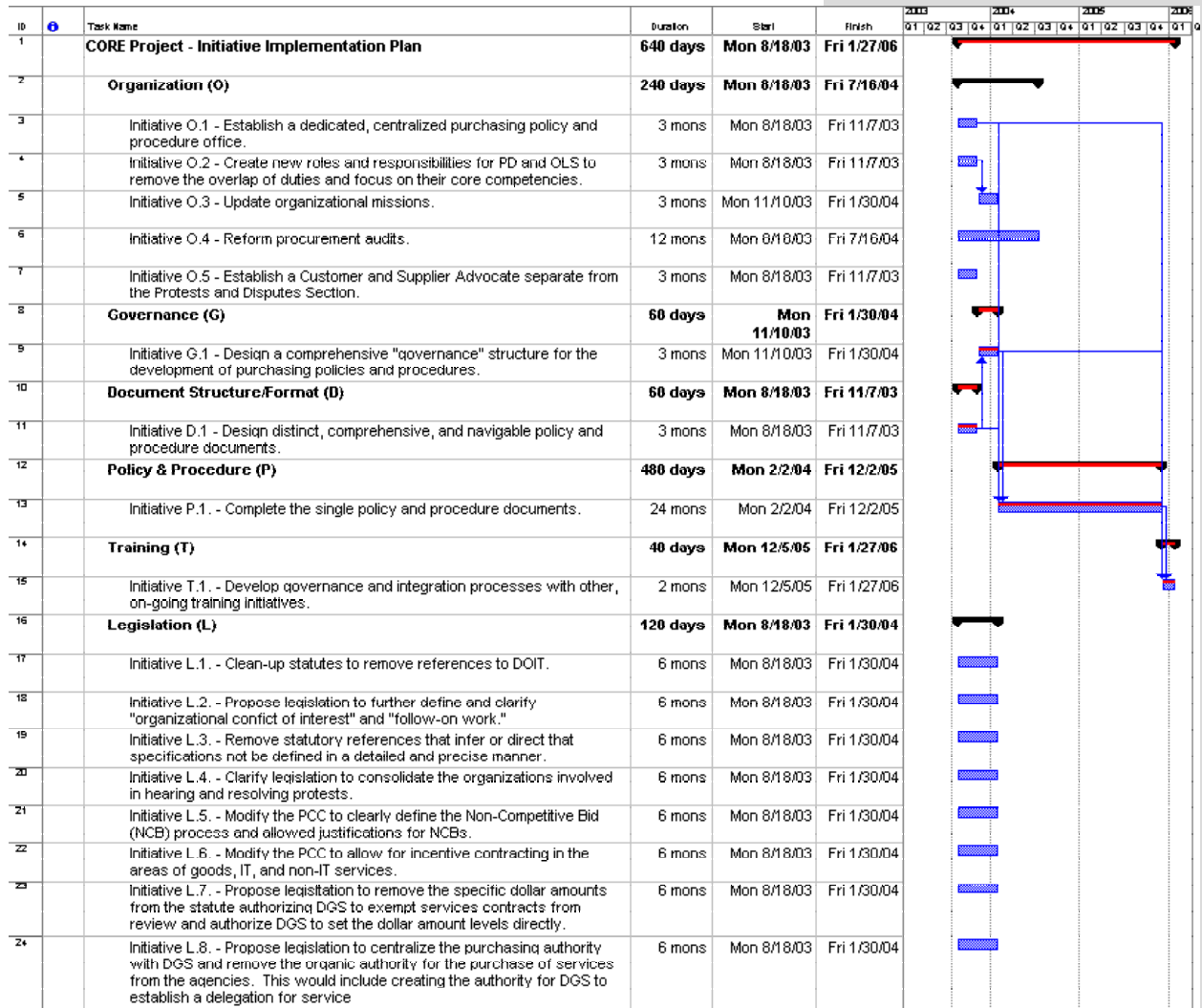
amount, such as \$25,000. Optimally, DGS would propose legislation to centralize the purchasing authority within DGS and remove the organic authority for the purchase of services from the agencies. This would include creating the authority for DGS to include non-IT services purchases in their delegation system, thus allowing for true uniformity.

The full analyses and complete set of recommendations for these are described in the body of this report, in Section 2.5.

Implementation Plan

Our implementation plan recommends an overall methodology for implementing the uniform purchasing policies as a common, organizing structure. Each of the specific recommendations resulting from the analysis follows this common structure.

The individual recommendations, which are addressed in detail in the body of the report, have been organized and grouped into logical initiatives. Each initiative is described in terms of its title, purpose, scope, estimated resources, estimated timeline, and dependencies. This information format is called an Initiative Definition Worksheet (IDW). The following Gantt Chart presents the initiatives as an overall implementation plan.



In conclusion...

The State of California's purchasing system is in dire need of standardization and clarification in terms of policies, procedures, and organizational assignments. DGS has the authority and is in the position to affect positive change in the purchasing practices of the State by developing, maintaining, communicating, and enforcing a uniform purchasing system.

Very few of the recommended improvements would require legislative changes. The policy, procedural, and organizational changes recommended in this report represent an integrated and comprehensive improvement strategy. The recommended statutory changes would serve to cement the improvements, creating a system of uniform statutes, policies, procedures, and organizational structure. Working together, these elements provide consistent rules, offering increased efficiency and effectiveness in the State's purchasing activities reclaiming the extensive costs associated with the present system. With the addition of an integrated training plan and a uniform system of delegation, the policies and procedures form the platform from which California can springboard to a state leading the way in the area of purchasing.